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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2016-0051, Sequence No. 7]

**Federal Acquisition Regulation; Federal Acquisition Circular
2005-93; Small Entity Compliance Guide**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This Small Entity Compliance Guide has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005-93, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005-93, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005-93 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755.

Rules Listed in FAC 2005-93

| <u>Item</u> | <u>Subject</u> | <u>FAR Case</u> | <u>Analyst</u> |
|-------------|---|-----------------|----------------|
| *I | Paid Sick Leave for Federal Contractors (Interim) | 2017-001 | Delgado |
| II | Fair Pay and Safe Workplaces; Injunction | 2014-025 | Delgado |

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005-93 amends the FAR as follows:

Item I—Paid Sick Leave for Federal Contractors (FAR Case 2017-001) (Interim)

This interim rule amends the FAR to implement Executive Order (E.O.) 13706 and a Department of Labor final rule issued on September 30, 2016, both entitled “Establishing Paid Sick Leave for Federal Contractors.” The interim rule requires contractors to allow all employees performing work on or in connection with a contract covered by the E.O. to accrue and use paid sick leave in accordance with E.O. 13706

and 29 CFR part 13. Contracting officers will include a clause in covered contracts.

Item II—Fair Pay and Safe Workplaces; Injunction (FAR Case 2014-025)

This final rule amends the FAR to include caveats on sections of FAR Case 2015-024, Fair Pay and Safe Workplaces, that were enjoined indefinitely as of October 24, 2016, by court order. FAR Case 2015-024 was published as a final rule in the Federal Register at 81 FR 58562 to implement Executive Order (E.O.) 13673, as amended by E.O.s 13683 and 13737. The rule had an effective date of October 25, 2016. On October 7, 2016, the Associated Builders and Contractors of Southeast Texas, Inc., the Associated Builders and Contractors, Inc., and the National Association of Security Companies, filed a lawsuit in the United States District Court for the Eastern District of Texas, seeking to overturn the final rule, Civil Action No. 1:16-CV-425. The District Court issued a "Memorandum and Order Granting Preliminary Injunction" on October 24, 2016. The Court Order on page 31 stated that "Defendants are enjoined from implementing any portion of the FAR Rule or DOL Guidance relating to the new reporting and disclosure requirements regarding labor law violations as described in Executive Order 13673 and implemented in the FAR Rule and DOL Guidance. Further, Defendants are enjoined from enforcing the restriction on arbitration agreements." The Court did not enjoin

implementation of those sections of, or the clause in, the FAR rule addressing the E.O.'s paycheck transparency requirements. To ensure compliance with the Court Order, the FAR Council issued a memorandum on October 25, 2016, subject "Court Order Enjoining Certain Sections, Provisions, and Clauses in Federal Acquisition Circular (FAC) 2005-90, Implementing Executive Order (E.O.) 13673, Fair Pay and Safe Workplaces."

Dated: December 9, 2016.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

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